

10 February 1984

MEMORANDUM FOR: [REDACTED] STAT

Office of the General Counsel

FROM: J. Kenneth McDonald
Chief, History Staff

SUBJECT: Transfer of Declassified OSS Records to the National Archives and Records Service

REFERENCES: A. Director of Information Services memorandum to DDA, dated 23 January 1984, subject: Release of OSS Records to the National Archives and Records Service

B. Archivist of the United States memorandum dtd 18 February 1983, subject: General guidelines for systematic declassification review of foreign government information (with attached extract from Federal Register, Vol. 48, No. 21 (31 January 1983), p. 4402ff.)

C. Archivist of the United States, "Public Use of Records, Donated Historical Materials, and Facilities in the National Archives and Records Service; Restrictions on the Use of Records." (from Federal Register, Vol. 48, No. 31 (14 February 1983), pp. 6440-41.)

D. Chief, Classification Review Group, Information Systems Analysis Staff, DDA, dtd 11 December 1978, "Guidelines for Classification Review of CIA Predecessor Records and Information between 1941-1946."

1. As we discussed in our phone conversation yesterday, I'm glad to send along references B, C and D, and some information about them, which might be useful in drafting a reply to [REDACTED] memo, reference A.

2. [REDACTED] notes that his concern "arises principally in the area of individual privacy". His case hangs heavily on the statement in the General Counsel's 20 December 1983 opinion that "the presence of an individual's name in a particular factual context--for example, his medical condition, psychological profile--may raise privacy concerns." He then gives some hypothetical cases (not having been able to find any actual examples), where a former OSS member could conceivably consider his privacy invaded by the release of these records.

3. In my view, [redacted] concerns result from a less than full understanding of how the CIA review team declassified these records, and of how the National Archives will process them once they are transferred. To see whether [redacted] privacy concerns represent a significant risk for CIA, I asked Alan Thompson, Chief of the Records Declassification Division of the National Archives and Records Service (NARS), to describe the procedures they will follow in processing our OSS records if and when they are transferred. I'll summarize his answers, which I think remove any grounds for [redacted] objections.

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4. On the questions that concern us here, NARS works under the regulations in reference B, which cover foreign government information, and in reference C, which cover privacy. I'll outline NARS's procedures step-by-step, as Alan Thompson has explained them to me:

5. Once CIA transfers our OSS records to NARS, their Records Declassification Division (Thompson's shop) will first deal with the foreign government information. CIA's OSS review team withheld all foreign government information that CIA wants to keep classified, and then clearly tabbed all the remaining foreign government information (which is of no CIA interest) for the Records Declassification Division at NARS to process. Thompson's shop will review all of this tabbed material, following their instructions from reference B, along with any instructions they have from the foreign governments involved. Almost all of the tabbed material is British, which Thompson will personally review. He is in continuous communication with the relevant British records officials, including those from the British intelligence services, here and in London. He suspects that he will have to withhold most British tabbed material for continued classification. Thompson goes through CIA to consult any foreign government intelligence service other than the British.

6. Once NARS's Records Declassification Division has dealt with this foreign government information (and material from other departments of the U.S. government), the OSS records will go to reference archivists in Modern Military Records. This staff will prepare inventories and descriptions of the entire collection, and determine the intensity of screening needed for each box before it can be released to any researcher. This appraisal is to identify boxes that contain material that might be subject to the restrictions in reference C. Since NARS's principal concern is with privacy considerations, boxes containing records dealing with individuals (case files, for example) are screened page-by-page before they are released to a researcher. In any event, no box will be released to a researcher until it has been properly screened for privacy and other restrictions specified in reference C. Early researchers will thus have to give NARS's Modern Military Records advance notice of their requests, so that the staff can screen each box requested to determine whether any records must be withheld.

7. Thompson indicated that the National Archives would gladly agree to consult with CIA (presumably with IMS in D0) in this screening process, especially to get advice on records possibly involving privacy concerns.

8. Thompson gave me the following statistics on the effectiveness of their screening process. The roughly 1000 cubic feet of records from OSS's Research and Analysis Branch, declassified and released to the public between 1974 and 1978, have not produced a single claim of invasion of privacy. In fact, in the 1970s Thompson's Records Declassification Division declassified and released 150 million pages of World War II records containing classified information (including well over 18 million pages of intelligence records), none of which has yet produced a single legal action against the U.S. Government for the invasion of privacy.

9. Thompson notes, incidentally, that if there were a suit, it would be against the National Archives, not against the department or agency that transferred the records to NARS.

10. I should add one minor point. On his reference A routing slip [redacted] notes that the declassification review of these OSS records did not cover his privacy concerns because it was carried out under E.O. 12065, which, having no classification category for "personal jeopardy", provided no basis for reviewers to withhold records on purely privacy grounds. While it is true that E.O. 12065 does not mention "personal jeopardy", reference D, the review team's actual guidelines, instructed them to withhold information which, if declassified, could reasonably be expected to "Disclose information which could place a person in jeopardy."

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11. In my view, the National Archives processing more than meets the concerns expressed in [redacted] memorandum. Once everyone understands NARS's procedures, I hope that they will recognize that their privacy concerns are really groundless. The National Archives' track record seems good enough--zero privacy suits for 150 million pages of World War II classified records declassified and released--to make transferring these declassified OSS records a prudent step for CIA. In any event, NARS (against whom any suit would have to be brought) is entirely willing to take the responsibility and the risk (such as it is), if CIA will transfer these declassified records to them, as the Agency set out to do in January 1980, and as the DCI more recently instructed us to do by his 2 February 1984 decision.

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/S/

J. Kenneth McDonald

Attachments

cc: Director of Information Services, DA (w/att)
Chief, Information Management Staff, DO (w/att)

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